

ORIGINAL  
RECEIVEDBefore the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 19 1994

In the Matter of :

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARYComputer III Remand Proceedings:  
Bell Operating Company Safeguards  
and Tier 1 Local Exchange Company  
Safeguards

CC Docket No. 90-263

Application of Open Network  
Architecture and Nondiscrimination  
Safeguards to GTE Corporation

CC Docket No. 92-256

REPLY COMMENTS OF CENTEX TELEMAGEMENT, INC.  
ON CUSTOMER PROPRIETARY NETWORK INFORMATION

The opening comments filed in this docket demonstrate a compelling need to strengthen the Commission's customer proprietary network information ("CPNI") rules to protect competitive and innovative services. CENTEX Telemanagement, Inc. ("CENTEX Telemanagement"), by its attorneys, urges the Commission to maintain and extend its CPNI rules to provide protection to all end users so long as local exchange carriers ("LECs") continue to enjoy a monopoly in local telephone service.

INTRODUCTION AND SUMMARY

Virtually all non-LEC commentators in this proceeding, like CENTEX Telemanagement, advocate strengthening the CPNI rules, among other things, to apply to all monopoly LECs and all LEC services, and to extend the existing prior authorization requirement to customers of all size, including small business and residential customers with fewer than 20 access lines.<sup>1</sup> Only the Bell Operating Companies ("BOCs") and smaller LECs oppose strengthening the CPNI rules. Their arguments, however,

<sup>1</sup> CENTEX Telemanagement at 2-3. See Section I below. References to the opening comments filed in this docket include the party's name and applicable page numbers.

misapprehend the fundamental basis for the CPNI rules: to protect competition, customer choice, and customer privacy from harm as a result of monopoly-acquired, customer-sensitive information.

The principal arguments by the BOCs and other incumbent LECs reveal this misguided approach to CPNI. Some BOCs suggest that the Commission should impose no more restraints on their use of CPNI than for competitive firms in unregulated markets.<sup>2</sup> Other BOCs, and many smaller independent LECs, argue that the Commission should create a so-called “level playing field” by restricting use of all carriers’ CPNI, whether or not the carrier operates in monopoly or competitive markets.<sup>3</sup> And independent LECs maintain that CPNI rules should not be applied to them because their relatively small size makes application of CPNI protections too burdensome.<sup>4</sup>

The history of the Commission’s CPNI rules leaves no doubt that CPNI merits special protection where it is obtained, by traditional LECs, as a consequence of their bottleneck monopolies. In these circumstances, customers have little or no ability to protect their privacy, and CPNI can be used to leverage the LECs’ existing monopolies into new, innovative, and potentially competitive services. It is this overriding concern that differentiates LECs from other competitive carriers, and thus supports strengthening and extending the CPNI rules.<sup>5</sup> At the very least, monopoly LECs should be prohibited from using CPNI for sales and marketing purposes in the same

---

<sup>2</sup> See, e.g., US West at 4-5, 22-23, 27; United States Tele. Ass’n (“USTA”) at 3.

<sup>3</sup> See, e.g., USTA at 3, 6; Ameritech at 8-9; Cincinnati Bell (“CBT”) at 2.

<sup>4</sup> See, e.g., USTA at 7; NECA at 2-3; CBT at 2; United at 6-7.

<sup>5</sup> As state regulators continue to authorize competitive entry into local exchange services (New York, Maryland, etc.), this same principle distinguishes incumbent LECs from new entrants, whether competitive access providers (“CAPs”) or entities offering a broader range of competitive local telephone services. The Commission’s CPNI rules should not prohibit CAPs, or any other carriers that do not enjoy monopoly power, from utilizing CPNI information they acquire about their own customers. See Section II below.

way that interexchange carriers are already prohibited from using LEC-acquired billing name and address information for marketing purposes.<sup>6</sup>

The import of the comments could not be clearer. The Commission can and should act immediately to strengthen its CPNI rules to protect consumers and existing and potential competitors of the BOCs and independent telephone companies.

### DISCUSSION

In its initial comments, CENTEX Telemanagement demonstrated that the Commission's CPNI rules unjustly allow monopoly LECs to exploit CPNI to impede competition for new and innovative telecommunication services, including alternative local exchange services. CENTEX Telemanagement urged the Commission to expand the existing CPNI rules to all basic exchange services, not just enhanced services, of all monopoly LECs (including the independents), not just the BOCs and GTE; to require prior customer authorization for CPNI release for all monopoly LEC customers, not just their customers with more than 20 lines; and to limit the rights to use LEC-obtained CPNI for marketing and sales purposes of incumbent LECs and their affiliates to the same scope allowed interexchange carriers and companies not affiliated with a LEC.<sup>7</sup>

Virtually all of the comments from other non-LECs agree, emphasizing that the existing CPNI rules are inadequate to protect either consumer privacy or competition.<sup>8</sup> The Commission's existing CPNI rules give particularly short shrift to small business and residential customers, fail to eliminate the monopoly LECs' CPNI advantages, and exacerbate the competitive disparities associated with the accelerating intro-

---

<sup>6</sup> 47 C.F.R. § 64.1201(c); see Policies and Rules Concerning Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, 8 FCC Rcd. 4478, 4485 (1993), Second Order on Reconsideration, 8 FCC Rcd. 8798 (1993).

<sup>7</sup> CENTEX Telemanagement at 5-17.

<sup>8</sup> See, e.g., Prodigy at 1-6; ITAA at 2-7; PA Office of Consumer Advocate ("PaOCA") at 3-6.

duction of competition for interstate access, intraLATA, and, increasingly, local exchange services. CompuServe correctly summed up some of these inadequacies:

[T]he Commission is certainly correct in acknowledging in its Public Notice that the changing telecommunications environment likely heightens the importance of customer privacy and competitive equity issues. Allowing RBOCs access to CPNI without customer consent violates fundamental expectations of privacy. . . . Moreover, allowing RBOCs to access CPNI while denying ESPs access to CPNI harms the information services marketplace and gives ESPs affiliated with the RBOCs a clear competitive advantage. [CompuServe at i].

The BOCs and other traditional LECs stand alone in their defense of the existing rules, which itself suggests that the existing rules overwhelmingly favor the incumbent LECs at the expense of customers, and existing and potential competitors. Moreover, the LECs' arguments for reducing or eliminating CPNI restrictions misapprehend the critical reason for CPNI rules: to protect consumers and non-LECs from abuse of monopoly-generated customer information. Rather than addressing the real issue, the LECs essentially ignore it, asserting that they should be treated like competitive firms in competitive markets, without regard to their historic and continuing local monopoly power.

I. Non-LECs Overwhelmingly Support Strengthening and Expanding CPNI Rules

Virtually all of the non-LEC comments submitted in response to the Commission's March 10, 1994 Notice<sup>9</sup> agree that the existing CPNI rules fail to adequately protect consumers and companies unaffiliated with monopoly LECs. These commentators—including existing and potential competitors of the LECs, new and innovative firms like CENTEX Telemanagement, and state regulators and consumer organizations—substantially agree on changes that should be made to provide an accept-

---

<sup>9</sup> Additional Comment Sought on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information, Public Notice, FCC 94-63 (released March 10, 1994) ("Notice").

able level of protection to consumers and companies offering competitive alternatives to LEC enhanced and basic exchange services.

For example, many commentators agree that the existing CPNI protections are too narrow because they fail to cover all services of all monopoly local exchange carriers. These comments argue that the CPNI rules should be expanded beyond enhanced services to protect, for example, customer premises equipment (including IDCMA and NATA), independent public payphones (including APCC), and video dialtone services (including NCTA).<sup>10</sup> Several non-LECs also support the Commission's suggestion to extend the existing CPNI rules to govern independent LECs as well as the BOCs and GTE.<sup>11</sup> The comments thus demonstrate the need to extend the CPNI rules to cover all services, not just enhanced services, of all monopoly LECs, not just the "Tier 1" BOCs and GTE.

Companies serving small businesses and consumer representatives also agree with CENTEX Telemanagement that the existing CPNI rules are clearly inadequate to protect small business and residential customers.<sup>12</sup> These comments concur that the 20 line minimum threshold for prior customer authorization should be extended to all customers of monopoly LECs, regardless of size. ITAA explains that the rationale for this distinction is "unfathomable," and that the existing rule gives the incumbent LECs "a clear competitive advantage over independent enhanced service providers in marketing enhanced services to smaller customers." ITAA at 5.

In sum, other than the BOCs and other monopoly providers of local telephone services, the overwhelming weight of the comments in this docket demonstrate a

---

<sup>10</sup> Independent Data Comm. Manuf. Ass'n ("IDCMA") at 2; NATA at 2; American Pub. Comm. Council ("APCC") at 2; National Cable Television Ass'n ("NCTA") at 4, 6-8. NCTA requests that the Commission develop separate CPNI rules for video dialtone services. *Id.*

<sup>11</sup> Texas PUC at 11. *See also, e.g.,* CompuServe at 11-13; IDCMA at 7-8.

<sup>12</sup> *See, e.g.,* California Bank Clearinghouse at 6; Information Ind. Ass'n at 3; Tele-Comm. Ass'n at 2, 4; PaOCA at 3-6; Texas PUC at 10-11.

plain consensus favoring expanding and strengthening the CPNI rules. Only the LECs oppose expanding or modifying the rules. But the LECs' arguments obscure the real issue in this proceeding, attempting to conceal the essential concern giving rise to the need for the CPNI rules: the LECs' continuing bottleneck control over local services.

## II. LEC Bottleneck Monopolies Require Strengthening CPNI Rules

The CPNI rules are required primarily because of the bottleneck monopoly power that the LECs continue to hold over virtually all local telecommunications services. It is by virtue of their position as local exchange monopolies that the LECs receive CPNI in the first instance; and because of the current lack of customer choice for local service alternatives, the LECs receive CPNI from all local exchange customers. Customers simply cannot choose, absent CPNI rules, to withhold CPNI from LECs and their affiliates. Thus, the incumbent LECs' position as bottleneck over competing services allows them to use CPNI information to achieve an unfair competitive advantage and retard the emergence of effective customer choice in local telecommunications, whether from CAPs or other entrants into the local exchange marketplace.<sup>13</sup>

Nonetheless, the LEC comments ignore the existence and importance of their monopoly power. In fact, some monopoly LECs go so far as to argue that they should be treated as if they were companies operating in a competitive market. For example, the BOCs argue that the same restrictions should be placed on them as on other telecommunications service providers, including interexchange carriers and other competitive firms, and that their customers "expect" sales pitches from the LECs and their affiliates. US West states cavalierly that it, "like other large, multi-faceted organizations, should be permitted the freedom to use [its] own business information in ways that [it] deems most appropriate—ways responsive to market initiatives and demands." US West at 7. This argument flies in the face of reality: the LECs' local bottlenecks make

---

<sup>13</sup> See, e.g., CENTEX Telemanagement at 6-8; Prodigy at 5-9; IDCMA at 5-7.

them fundamentally different than other service providers and necessitate stringent CPNI rules that would, quite clearly, be unnecessary in a truly competitive environment.

Many incumbent LECs argue that there should be no more restrictions on their use of CPNI than any company in a competitive market. USTA notes that CPNI regulations are not applied to a whole litany of competitive firms, including retail stores and credit card companies. USTA at 3; *see also* BellSouth at 8-9. But the LECs, by virtue of their monopolies, are substantially different from, for example, CitiBank credit card services. If CitiBank exploits information regarding its customers, for instance by providing it to numerous affiliates, customers can choose to use another credit card company, canceling their CitiBank card in favor of a card offered by a company that offers more customer privacy. If local exchange customers object to the LECs providing CPNI to their affiliates, in contrast, they cannot choose another local exchange company.

Nor does CitiBank have a government protected guarantee that it will receive proprietary information from every credit card holder in the areas where it does business; instead, CitiBank can only secure information from customers that it wins over in the competitive market. The state-franchised local exchange monopolies, in contrast, are assured that they will have CPNI of every telephone customer in their local service areas. Moreover, CitiBank's rivals do not have to purchase credit cards from CitiBank to sell credit services to CitiBank customers, as LEC rivals must, let alone provide the type of competitively sensitive information (including network configuration and traffic loads) that the LECs receive from their rivals' CPNI.<sup>14</sup>

Similarly, the claim by some monopoly LECs that local exchange customers "expect" sales pitches from the LEC and its unregulated affiliates based on CPNI (*see, e.g.*, NYNEX at 3) completely fails to comprehend the difference between the local

---

<sup>14</sup> *See* CENTEX Telemanagement at 7-8 & n.9.

telephone monopolies and companies operating in a competitive market. Customers offended or concerned about use of information provided to CitiBank or MCI, for example, can select a different credit card provider or long distance company, thereby “voting with their feet” against any perceived intrusion on their privacy. LEC customers have no such options. They can be subjected to endless marketing efforts by the local exchange monopoly—and any company with which their local exchange company is affiliated—without ability to choose a different service provider. Indeed, absent CPNI rules, customers have no practical remedy to LEC invasions of their privacy.

The theme of these LEC arguments is that the Commission should essentially ignore the LECs’ monopoly control over local exchange and access services. But it cannot and should not. Comparing LECs and competitive firms is a meaningless exercise in light of the fundamental marketplace difference between them. Because of their bottleneck power, any misuse of CPNI by LECs threatens not only to interfere with competition, but to leave customers without recourse for invasion of their privacy interests. Only when the economic and regulatory environment has changed such that effective competition and customer choice exists for all local telephone services will LECs be situated like the competitive-market firms they ask the Commission to emulate. While that trend is beginning, and should continue as local jurisdictions expand authorization for competitive entry into additional markets and basic exchange services by CAPs and others, the LECs continue to enjoy substantially undiminished market power across a broad range of local exchange and enhanced services.

For their part, independent LECs also ignore the bottleneck underpinnings of the CPNI rules in arguing that compliance with the CPNI rules would be too “burdensome” in light of their relatively small size and assets.<sup>15</sup> The plain fact is that the independents possess the same monopoly power in their local markets as the BOCs

---

<sup>15</sup> See, e.g., USTA at 7; CBT at 2; United at 6-7.



and GTE, thus requiring that they be governed by the same CPNI rules. To the extent that the Commission concludes that compliance with certain requirements (such as the annual reporting requirements) is too onerous, the Commission should waive those specific rules. But, as with GTE, the Commission should no longer sanction monopoly LECs, whether independent or not, to use their preferential access to CPNI to disadvantage emerging competition.<sup>16</sup>

### III. Emerging Services Require Strengthening CPNI Rules

Several commentators note that LEC opportunities to use CPNI to harm rivals will multiply as competition eventually emerges to extend through the local exchange and technology introduces new and innovative services. As just one example, the Pennsylvania Office of Consumer Advocate and NCTA both detail potential opportunities that BOCs will have to unfairly exploit CPNI to gain a competitive advantage in video services.<sup>17</sup>

CENTEX Telemanagement's first-hand experience with LEC CPNI abuse, as detailed in its initial comments,<sup>18</sup> demonstrates the wisdom of this prediction. CENTEX Telemanagement currently is in a unique position where, although its clients purchase local exchange Centrex services from the LECs, some LECs have perceived CENTEX Telemanagement as a potential competitor, and, as a result, aggressively exploited CPNI to discourage potential and existing clients from using its services.

CENTEX Telemanagement's experience demonstrates that the CPNI rules cannot be restricted to "enhanced" LEC services only, because opportunities for defeat-

---

<sup>16</sup> Some independent LECs suggest that extending the CPNI rules to independents is not justified because the intermodal "affiliation" strategies (e.g., Bell Atlantic/TCI) mentioned in the Notice are not related to them. See *United* at 3 n.5. But the Commission clearly has the legal authority to amend its rules where circumstances warrant, and need not, as these LECs argue, impose CPNI restrictions only on those entities to which the Computer III non-structural "enhanced services" safeguards apply.

<sup>17</sup> NCTA at 5-6; PaOCA at 5.

<sup>18</sup> CENTEX Telemanagement at 8-11.

ing customer choice and impairing the development of alternative telecommunications options are just as real—if not more pressing today—in local exchange markets as in the enhanced services market. Furthermore, LEC potential (and economic incentive) for abuse of CPNI in order to achieve unilateral competitive advantages will only get worse as local exchange entry is authorized in additional jurisdictions and as competition for other new, innovative services develops. Of course, the list of services, products and markets unprotected by CPNI rules will grow as more local services are opened to competitive entry and innovative services are introduced and extended into markets throughout the nation. These nascent services and products are most in need of protection from LEC abuse of CPNI, and they are most in need of CPNI protection. Unless the Commission acts now to protect these emerging forms of exchange and innovative, broadband competition with traditional LECs, it runs the risk that anticompetitive conduct by monopoly LECs will diminish competition for new services or exclude it altogether.

### CONCLUSION

There is no longer any justification for allowing monopoly LEC use of CPNI that is prohibited for LEC competitors, or for drawing arbitrary size limitations to the privacy protections accorded LEC subscribers. The Commission should therefore modify the CPNI rules to extend the prior authorization requirement to LEC small business and residential customers with fewer than 20 lines, to apply its CPNI rules to the independent telephone companies, not just the BOCs and GTE, and to apply to monopoly LECs the same restriction against marketing use of LEC-acquired BNA that it presently applies to interexchange carriers. In contrast, competitive firms and local exchange rivals of the incumbent LECs, which clearly do not have monopoly power,

should be permitted to continue to use their own CPNI, as the current rules appropriately allow.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "John S. di Bene", is written over the "By:" text.

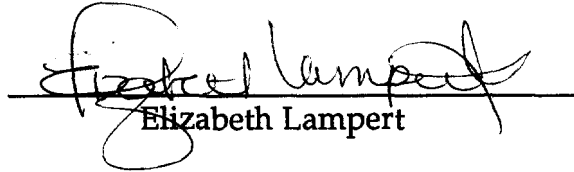
By:  
Glenn B. Manishin  
John S. di Bene  
BLUMENFELD & COHEN  
1615 M Street, N.W. , Suite 700  
Washington, D.C. 20036  
(202) 955-6300

*Attorneys for CENTEX Telemanagement, Inc.*

Dated: May 19, 1994.

## CERTIFICATE OF SERVICE

I, Elizabeth Lampert do hereby certify on this 19nd day of May, 1994, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below.



Elizabeth Lampert

Rose M. Crellin \*  
Policy Planning Division  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

William F. Caton \*  
Acting Secretary  
Federal Communications  
Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

ITS \*  
1919 M Street, N.W., Room 246  
Washington, D.C. 20036

Robert W. Gee  
Public Utilities Comm. of Texas  
7800 Shoal Creek Boulevard  
Austin, Texas 78757

Jeffery L. Sheldon  
Utilities Telecommunications Council  
1140 Connecticut Ave., NW  
Suite 1140  
Washington, DC 20036

Deborah Haraldson  
NYNEX  
120 Bloomingdale Road  
White Plains, New York 10605

Lawrence W. Katz  
Bell Atlantic Telephone  
1710 H Street, NW  
Washington, DC 20006

William D. Basket  
Cincinnati Bell Telephone  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202

M. Robert Sutherland  
Bellsouth Telecommunications  
4300 Southern Bell Center  
675 W. Peachtree Street  
Atlanta, Georgia 30375

John F. Sturm  
Newspaper Ass'n of America  
529 14th Street, N.W.  
Suite 440  
Washington, D.C. 20045-1402

Albert H. Kramer  
Keck, Mahin & Cate  
1201 New York Ave.  
Penthouse Suite  
Washington, D.C. 20005-3919

Philip F. McClelland  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

\* Signifies delivery via messenger

Sandra G. Weis  
Prodigy Services Co.  
445 Hamilton Ave.  
White Plains, NY 10601

R. Michael Senkowski  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Joe D. Edge  
Hopkins & Sutter  
888 16th Street, N.W.  
Washington, D.C. 20006

Michael J. Shortley, III  
Rochester Telephone Corp.  
180 S. Clinton Ave.  
Rochester, N.Y. 14646

Anne U. MacClintock  
Southern New England Tel. Co.  
227 Church Street  
New Haven, Connecticut 06510

Robert M. Lynch  
Southwestern Bell Tel. Co.  
One Bell Center, Room 3520  
St. Louis, Missouri 63101

Jay C. Keithley  
1850 M Street, N.W.  
Suite 1100  
Washington, D.C. 20036

Mary McDermott  
United States Tel. Ass'n  
1401 H Street, N.W.  
Suite 600  
Washington, D.C. 20005

Kathryn Marie Krause  
1020 19th Street, N.W.  
Suite 700  
Washington, D.C. 20036

Richard A. Askoff  
National Exchange Carrier Ass'n  
100 S. Jefferson Road  
Whippany, N.J. 07981

Randolph J. May  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2404

Werner K. Hartenberger  
Dow, Lohnes & Albertson  
1255 23rd Street, N.W.  
Washington, D.C. 20037

Joseph P. Markoski  
Squire, Sanders & Dempsey  
1201 Pennsylvania Ave., N.W.  
P.O. Box 407  
Washington, D.C. 20044-0407

Herbert E. Marks  
Squire, Sanders & Dempsey  
1201 Pennsylvania Ave., N.W.  
P.O. Box 407  
Washington, D.C. 20044-0407

Steven J. Metalitz  
Information Indus. Ass'n  
555 New Jersey Ave., N.W.  
Suite 800  
Washington, D.C. 20001

Paul Rodgers  
NARUC  
1102 ICC Building  
P.O. Box 684  
Washington, D.C. 20044

Daniel L. Brenner  
1724 Massachusetts Ave., N.W.  
Washington, D.C. 20036

\* Signifies delivery via messenger